

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ICICI BANK LIMITED, NEW YORK
BRANCH, et al.,

Plaintiffs,

-against-

VISHAL DOSHI, et al.,

Defendants.
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USDC SDNY
DOCUMENT
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DATE FILED: 12/19/2019

18-cv-9128 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

I am in receipt of pro se Defendant Apoorva Doshi's letter dated November 25, 2019, seeking an extension of time to respond to Plaintiffs' complaint. (Doc. 57.) On November 27, 2019, Plaintiffs filed an amended complaint against Defendant Doshi and others. (Doc. 56.) This amended complaint dropped one prior defendant, Atit Shah, from the action. (*Id.*)

This action has been pending since October 4, 2018. (*See* Doc. 1.) No Defendant has answered, although Defendant Doshi has sought and received multiple extensions of time to respond to the initial complaint. No affidavit of service or waiver of service of the initial complaint as to Defendant Doshi has been filed on the docket. In addition, Plaintiffs did not seek leave to file an amended complaint, did not inform the court of the consent of opposing parties, and has not yet requested any summonses in connection with the amended complaint.

An amended complaint supersedes an unserved initial complaint once it is filed. However, where the initial complaint has been served, and the amended complaint must also be served under Federal Rule of Civil Procedure 5(a), the amended complaint only supersedes upon service. *Int'l Controls Corp. v. Vesco*, 556 F.2d 665, 669 (2d Cir. 1977); *TCS Capital Mgmt.*,

LLC v. Apax Partners, L.P., No. 06-CV-13447 (CM), 2008 WL 650385, at *11 (S.D.N.Y. Mar. 7, 2008). In addition, once a complaint has been served, the plaintiff may only amend as a matter of course within 21 days after service. Fed. R. Civ. P. 15(a). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The filing of an amended complaint “does not restart the 120 day period for service under [Federal] Rule of Civil Procedure 4(m).” *Sikhs for Justice v. Nath*, 893 F. Supp. 2d 598, 607 (S.D.N.Y. 2012). Accordingly, it is hereby:

ORDERED that if the original complaint was served on Defendant Doshi and/or any other Defendants, Plaintiffs shall file (1) proof of service of the initial complaint in accordance with Federal Rule of Civil Procedure 4(l)(1), and (2) a letter setting forth its argument why the amended complaint should not be stricken for failure to comply with Federal Rule of Civil Procedure Rule 15.

IT IS FURTHER ORDERED that if the original complaint was not served on Defendant Doshi and/or any other Defendants, Plaintiffs shall submit a letter setting forth its argument why this action should not be dismissed for failure to prosecute as against those Defendants who have not been served.

In either case, Plaintiff’s update letter shall be submitted on or before January 3, 2020.

IT IS FURTHER ORDERED that Defendant Doshi’s request for an extension is held in abeyance at this time. To the extent the Federal Rules of Civil Procedure impose a valid deadline on Defendant Doshi to respond to the initial complaint or the amended complaint, such deadline is held in abeyance pending further order of this Court.

IT IS FURTHER ORDERED Defendant Doshi is directed to provide the court with an address at which he can receive mail. He is advised that prior orders sent to the return address


listed on the docket and on his most recent communication have been repeatedly returned as undeliverable.

The Clerk of Court is respectfully directed to mail a copy of this Order to pro se Defendant Apoorva Doshi, at Quinten Matijselei 8, Bus 8, 2018 Antwerpen, Belgium.

As a courtesy, Chambers shall e-mail a copy of this Order to Defendant Apoorva Doshi at apoorvadoshi@gmail.com. However, Defendant is advised that to the extent he is a valid defendant, it is his obligation to provide the Court with a valid mailing address.

SO ORDERED.

Dated: December 19, 2019
New York, New York


Vernon S. Broderick
United States District Judge